



## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2020-0065; Notice 1]

### Mercedes-Benz USA, LLC, Receipt of Petition for Decision of Inconsequential

#### Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Mercedes-Benz AG (“MBAG”) and Mercedes-Benz USA, LLC, (“MBUSA”) (collectively, “Mercedes-Benz”) have determined that certain model year (MY) 2020 Mercedes-Benz CLA 250 motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 111, *Rear Visibility*. Mercedes-Benz filed a noncompliance report dated May 11, 2020. Mercedes-Benz subsequently petitioned NHTSA on June 3, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces receipt of Mercedes-Benz’s petition.

**DATES:** Send comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- Mail: Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

- Hand Delivery: Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except for Federal holidays.
- Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also

be viewed on the internet at <https://www.regulations.gov> by following the online instructions for accessing the docket. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a Federal Register notice published on April 11, 2000 (65 FR 19477-78).

#### **SUPPLEMENTARY INFORMATION:**

**I. Overview:** Mercedes-Benz has determined that certain MY 2020 Mercedes-Benz CLA 250 motor vehicles do not fully comply with the requirements of paragraph S.5.5.1 of FMVSS No. 111, *Rear Visibility* (49 CFR 571.111). Mercedes-Benz filed a noncompliance report dated May 11, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Mercedes-Benz subsequently petitioned NHTSA on June 3, 2020, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

This notice of receipt of Mercedes-Benz's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or other exercise of judgment concerning the merits of the petition.

**II. Vehicles Involved:** Approximately 155 MY 2020 Mercedes-Benz CLA 250 vehicles manufactured between June 19, 2019, and August 21, 2019, are potentially involved.

**III. Noncompliance:** Mercedes-Benz explains that the noncompliance is that the rearview camera displays in the subject vehicles do not fully meet the field of view requirements outlined

in paragraph S5.5.1 of FMVSS No. 111. Specifically, the warning message text box slightly obscures a portion of the top of the rear middle test object (Object B).

**IV. Rule Requirements:** Paragraph S5.5.1 of FMVSS No. 111 includes the requirements relevant to this petition. When tested in accordance with the procedures in S14.1, the rearview image shall include: (a) A minimum of a 150-mm wide portion along the circumference of each test object located at positions F and G specified in S14.1.4; and (b) the full width and height of each test object located at positions A through E specified in S14.1.4.

**V. Summary of Mercedes-Benz's Petition:** The following views and arguments presented in this section, V. Summary of Mercedes-Benz's Petition, are the views and arguments provided by Mercedes-Benz. They have not been evaluated by the Agency and do not reflect the views of the Agency. Mercedes-Benz described the subject noncompliance and stated their belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Mercedes-Benz submitted the following reasoning:

1. When the subject vehicles are placed in reverse, a driver alert message appears on the in-vehicle display to remind drivers to pay attention to their surroundings. A deviation in the software received from the supplier caused the pitch of the rearview camera image not to meet MBAG's specification, so that when the driver alert message appears, the black border that surrounds the message box slightly covers a portion of the top of the rear middle test object (Test Object B). When the text box is displayed, approximately 10 percent of the extreme top of Test Object B is covered by the border. However, the remaining 90 percent of the test object is displayed without issue. None of the other test objects is affected by this condition, and the rearview camera display otherwise functions as intended.

2. MBAG corrected the issue in production in early September 2019, and through its technical investigation of the issue found that 155 vehicles in the United States market contain the affected software. On May 4, 2020, MBAG determined that a noncompliance existed with the requirements of FMVSS 111, S5.5.1 pertaining to the rearview camera field of view. Mercedes-Benz submitted its initial Noncompliance Information Report on May 11, 2020, and submitted an amended report on May 18, 2020, to include information identifying the affected components. *See* NHTSA Recall 20V-265, attached. Mercedes-Benz is not aware of any reports or complaints about the issue from the field.
3. The subject vehicles display a driver alert message that appears when the driver places the vehicle in Reverse and reminds drivers to pay attention to their surroundings when backing up the vehicle. The warning message remains on the screen the entire time the vehicle is in the Reverse position and automatically extinguishes at the end of the backing event (when the vehicle is moved to a position other than Reverse). In the subject vehicles, when the alert message appears, the black border that surrounds the box partially obscures the extreme top portion of Test Object B. As a result, the rear middle test object does not meet the full field of view requirements. Despite the manner in which the text box displays, the condition does not pose an increased safety risk because a person behind the vehicle, including a small child, would still be visible by the driver. The objective of the FMVSS No. 111 field of view requirements, to ensure that persons located at the rear of the vehicle remain visible to the driver, continues to be met despite the variation in the software.

4. The overarching objective of FMVSS No. 111 is to mitigate against the potential for accidents or injuries due to striking persons, including children, located at the rear of the vehicle. The rearview camera provisions contain a field of view requirement for the zone behind the vehicle and are met by displaying certain height and width parameters of the designated test objects when tested in accordance with the test procedure set out in the standard. *See* FMVSS No. 111, paragraph S5.5.1. The provision, in relevant part, states:

Field of view. When tested in accordance with the procedures in S14.1, the rearview image shall include: (a) A minimum of a 150-mm wide portion along the circumference of each test object located at positions F and G specified in S14.1.4; and (b) The full width and height of each test object located at positions A through E specified in S14.1.4.
5. The Agency previously considered the safety benefits related to the use of overlays such as text-based alert messages, guidance markers, and other indicators on rear camera visibility systems during the development of the FMVSS No. 111 rulemaking. While NHTSA recognized the inherent safety benefit of these features, the concerns it raised about the appropriate use of overlays was specific. NHTSA carefully considered whether and how to regulate the use of overlays in order to mitigate against a specific type of concern, the potential for overlays to create blind spots in the rearview image that could obscure or mask small objects or persons at the rear of the vehicle, particularly children. *See* 79 FR 19178 (April 7, 2014).
6. Ultimately, NHTSA declined to mandate specific performance criteria related to the use of overlays, largely due to a lack of practical means of testing the wide variations

of overlay use and design without additional research. Instead, the Agency considered the field of view requirements to have been met as long as they did not cover any of the required portions of the test objects if activated automatically or if the overlay was manually activated by the driver. In doing so, NHTSA recognized the “decision not to regulate overlays does not relieve manufacturers from designing their system overlays so as to afford their customers *a reasonable ability to see the required field of view.*” *Id.* at 19211 (emphasis added).

7. Given the background regarding the very specific type of concern related to the use of overlays, the subject vehicles do not create an increased safety risk. The portion of Test Object B that is affected by the software issue is limited to the extreme top edge of the test object. The border of the text box covers approximately 10 percent of the top edge of Test Object B. The full height of the test object when displayed on the screen is 800 mm. The uppermost portion of the test object is 150 mm. When the alert message appears on the in-vehicle display, the border obscures approximately half of the 150 mm strip of the text object, or 75 mm.
8. Despite the manner in which the alert message displays, the system still operates to provide the driver an ability to fully and safely see the required field of view. The key concern related to the use of overlays raised by the Agency in the FMVSS No. 111 final rule was the potential for the overlay to prevent the driver from seeing a child or small person located at the rear of the vehicle. That concern does not manifest in this instance. The border obscures only the upper edge of the test object. The remaining 90 percent of the lower portion of the test object remains fully visible and the driver is still able to recognize a person or child present behind the vehicle.

Because only the extreme upper edge of the test object is affected by the software deviation, none of the Agency's concerns related to covering or obscuring the image of a person behind the vehicle with an overlay occurs.

Mercedes-Benz concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Mercedes-Benz no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Mercedes-Benz notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

**Otto G. Matheke III,**

*Director, Office of Vehicle Safety Compliance.*

**Billing Code 4910-59-P**

[FR Doc. 2020-20661 Filed: 9/17/2020 8:45 am; Publication Date: 9/18/2020]